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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,830	07/12/2005	Josef Hertelendi	WFP-0393	4270
24131	7590	03/31/2008	EXAMINER	
LERNER GREENBERG STEMER LLP			MCCARRY JR, ROBERT J	
P O BOX 2480			ART UNIT	PAPER NUMBER
HOLLYWOOD, FL 33022-2480			3617	
MAIL DATE		DELIVERY MODE		
03/31/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/541,830	<b>Applicant(s)</b> HERTELENDI ET AL.
	<b>Examiner</b> ROBERT J. MCCARRY JR	<b>Art Unit</b> 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12/20/07.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 4-7 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 4-7 is/are rejected.

7) Claim(s)       is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SE/08)  
Paper No(s)/Mail Date      

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date      

5) Notice of Informal Patent Application

6) Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Brenny et al (US 5,839,377).

Brenny et al discloses a device for installing and removing rail clips connected to a railroad cross tie comprised of two tool levers 102, 104 supported on an overall frame shown in figure 1. Each tool lever has a pressing surface 106 at the lower end of the lever 102, 104. The tool lever also has an additional set of jaws mounted to it for closing about the rail clip to remove the clip. Shown in figures 8 and 9 the jaw is shown in the open and closed positions and figure 10 shows the jaw and its placement on the lever arm in proximity to the pressing surface. The lever arms and jaws are each pivoted about a lever bearing. The lever bearing for the lever arms 102, 104 is located towards the top of the arm and numbered 162 and connects the lever arm to the pivot bracket 156. A second lever bearing is positioned on the jaw assembly, transversely from the first lever bearings, and allows for the pivoting of the jaw arms 230 about the mounting assembly. Each of the lever assemblies are moved by hydraulic pistons controlled by an operator on the overall frame assembly. The pistons squeeze the arms together to place pressure on the clips as they are installed.

***Response to Arguments***

Applicant's arguments filed December 20, 2007 have been fully considered but they are not persuasive. Applicant argues that the prior art of Brenny et al does not show two sets of lever bearings positioned transversely from each other on the work frame. As described above the prior art discloses two hydraulically controlled lever assemblies connected to frames. The first being the lever arms to install the rail clips and the second set is a pair of jaws, also mounted on the lever arms to clamp and remove the rail clips. Both are moved by hydraulic pistons and are allowed to pivot about bearing assemblies. The first sets of lever bearings are positioned at the top of the lever arms with the second set of lever bearings positioned on the removable jaws and are positioned transversely from the first set of lever bearing allowing the jaws to pivot in a different direction from the lever arms.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. MCCARRY JR whose telephone number is (571)272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Joseph Morano/  
Supervisory Patent Examiner, Art Unit 3617  
  
RJM  
March 20, 2008

/R. J. McCarry Jr./  
Examiner  
Art Unit 3617

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